

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

UNITED STATES OF AMERICA,)

Plaintiff,)

vs.)

Case No. 4:09CR144 CDP

REYES EMILIO IBARRA,)

Defendant.)

ORDER

After conducting an *ex parte* hearing with defendant and his former counsel, I indicated that when new counsel entered an appearance I would allow the defense to reopen the motion to suppress that was previously filed and withdrawn. New counsel has now entered, and the government has objected to any reopening of the motions, arguing that defendant knowingly and validly waived his right to file pretrial motions. New defense counsel has filed a brief arguing that the waiver was not valid.

Based on the conversations I had with defendant and his former counsel, I believe that relief should be granted from the waiver for good cause, as allowed by Rule 12(e), Fed. R. Crim. P. It appears to me that counsel and defendant had a mis-communication about the significance of withdrawing the motion to suppress that had previously been filed. Rather than do as the government requests, and

invite a § 2255 motion alleging ineffective assistance of counsel should defendant be convicted, I believe curing any potential defect at this time is in the interests of justice. I will therefore exercise my discretion and will allow the motion to suppress to be reopened. The motion has been filed and briefed [docket entries # 24, 26] and so I will set a hearing date and trial date. As I indicated to the parties at the most recent hearing, I will hear the motion myself, and will not re-refer the matter to the magistrate judge.

Accordingly,

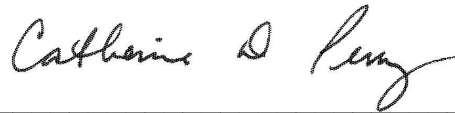
IT IS HEREBY ORDERED that defendant's amended motion to suppress [#24] will be considered, despite defendant's previous waiver.

IT IS FURTHER ORDERED that an evidentiary hearing on the amended motion to suppress will be held before the undersigned on **Tuesday, August 11, 2009 at 2:30 p.m. in Courtroom 14 South**. Defendant's presence is required for this hearing.

IT IS FURTHER ORDERED that this matter is set for trial on the two-week trial docket beginning **Monday, August 24, 2009 at 8:30 a.m.**

IT IS FURTHER ORDERED that all time elapsed as a result of defendant's change of counsel and request to reopen motions is excludable time under the Speedy Trial Act, 18 U.S.C. § 3161(h)(7), because this time was

necessary in the interests of justice to allow defendant the time necessary to exercise his constitutional right to counsel of his choice, and the ends of justice served by this limited delay outweigh any interests of the public and the defendant in a more speedy trial.

A handwritten signature in black ink, reading "Catherine D. Perry". The signature is written in a cursive, flowing style.

CATHERINE D. PERRY
UNITED STATES DISTRICT JUDGE

Dated this 14th th day of July, 2009.